IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No.: 10/772,518	§	Examiner: Chen, Qing
Filed: February 5, 2004	§	Group/Art Unit: 2191
Inventor(s):	§	Atty. Dkt. No: 5150-38605
Robert E. Dye, Darshan Shah,	§	
Steve Rogers, Greg Richardson,	§	
Dean A. Luick	§	
Title: GRAPHICAL	§	
PROGRAMMING	§	
SYSTEM WITH BLOCK	§	
DIAGRAM EXECUTION	§	
AND DISTRIBUTED	§	
USER INTERFACE	§	
DISPLAY	§	
	§	

REPLY BRIEF

Box: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

Further to the Examiner's Answer of January 20, 2010, Appellant presents this Reply Brief. Appellant respectfully requests that this Reply Brief be considered by the Board of Patent Appeals and Interferences.

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REMARKS

Appellant respectfully thanks the Examiner for noting that claims 59-104 stand rejected under 35 U.S.C. § 103(a), *not* 102(b), as incorrectly indicated in the Status of Claims section of the Appeal Brief.

ARGUMENTS

The below is presented in response to the Examiner's Response to Argument in the Examiner's Answer, and is particularly directed to any *new* arguments in the Examiner's Answer directed to the independent claims. Thus, where no new discernable arguments were presented in the Examiner's Answer, Appellant has not added further responses, but relied on those presented in the Appeal Brief.

Section 103(a) Rejections

Claims 59, 61, 62, 63, 64, 65, 66, 67, 70, 71, 72, 73, 76, 77, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 101, 102, 103, 104:

Independent claim 59 is separately patentable because the cited reference does not teach or suggest the limitations recited in this claim.

In the Examiner's Response, the Examiner argues that "Huntsman's MS-Windows program is one type of graphical program, albeit not a graphical program which includes a block diagram as claimed." **This is incorrect**. Appellant has clearly defined "graphical program" in both the Specification and Claims as including a block diagram that itself includes a plurality of interconnected function icons representing graphical data flow of a desired function, where executing the graphical program includes executing the block diagram.

Appellant thus submits that the cited MS-Windows program of Huntsman is not in accordance with this definition, and that it is improper for the Examiner to attempt to redefine this term contrary to Appellant's Specification and Claims. Kodosky does disclose a graphical program as defined by Appellant, but Huntsman does not. The Examiner's assertion that "as the claims are interpreted as broadly as their terms reasonably allow (see MPEP § 2111.01(1)), the interpretation of a broad limitation of a "graphical program" as a MS Windows program and the like by one of ordinary skill in the art is considered to be reasonable by its plain meaning." is incorrect and improper, at least because interpreting the claims broadly does not allow for interpreting them

contrary to their own definitions, and contrary to the Specification, as the Examiner is certainly aware.

The Examiner further argues that 'Under the broadest reasonable interpretation, the claimed feature of "a plurality of interconnected function icons" can be reasonably interpreted by one of ordinary skill in the art as graphical icons of the program and thus, the claims are not limited to the scope of graphical source code of the program'". Appellant respectfully notes that the mention of "source code" in the Appeal Brief was solely for the purpose of explanation and clarification, and not intended to imply additional functionality beyond that recited in the claim. For example, Appellant respectfully submits that one of skill in the programming arts would readily understand that the recited block diagram of the graphical program (which includes a plurality of interconnected function icons representing graphical data flow of a desired function, and which is executed as part of the executing the graphical program) is neither taught nor suggested by Huntsman. Moreover, as explained previously, claim 59 clearly refers to the graphical program's block diagram and user interface as separate and distinct parts of the graphical program, whereas the Examiner attempts to characterize Huntsman's GUI information (GIF file) as somehow equivalent to, or corresponding to, Appellant's information regarding the block diagram (which is separate and distinct from information regarding the user interface of the graphical program), when it clearly corresponds to Appellant's information regarding the user interface of the graphical program. Appellant encourages the Examiner to read Appellant's Specification closely regarding the nature and meaning of "graphical program", in contrast with "text-based program", and to further consider the nature and meaning of "block diagram".

The Examiner continues to argue that Huntsman's MS-Windows programs, such as Windows Explorer, are graphical programs, again citing col.8:20-23, and arguing that using "icons, panels, and windows" somehow makes an otherwise text-based program a graphical program, specifically, that "Windows Explorer is a file manager program that provides a GUI for accessing the file systems. The file systems are represented by various folder icons and file icons in a window view. Therefore, as can be seen, a MS-Windows program, such as, is a graphical program with a GUI". As explained at length above and previously, this is incorrect.

For example, regarding the cited Windows Explorer program, Appellant notes that the cited graphical elements are part of the GUI, and are not executable, whereas the claimed graphical program of claim 59 necessarily includes a GUI *and* a block diagram that includes a plurality of interconnected function icons representing graphical data flow of a desired function, and which is executed as part of executing the graphical program. Thus, the Windows Explorer program is *not*, in fact, a graphical program as claimed.

The Examiner then argues that "Huntsman clearly discloses that Huntsman's MS-Windows program are graphical programs, citing column 1: 26-36, which states that 'With the introduction of the Apple Macintosh, XWindows, and Microsoft Windows, graphical user interfaces (OU1s) have become popular. GUls are computer user interfaces that are pictorial rather than text based.'), and then asserts "that MS-Windows programs, such as Windows Explorer, are pictorial rather than textbased." Applicant again respectfully submits that the Examiner's analysis is flawed and misinformed.

As those of skill in the art know, a text-based program with a GUI is not a graphical program as recited and defined in the claim and Specification. The Examiner is not permitted to redefine terms in the claim in a manner contradictory with the claims and the Specification.

Regarding Appellant assertion that Huntsman's GIF file is particular to the (text-based) program's GUI, (in item b)), the Examiner disagrees, and, citing col.9:31-50, asserts that "Huntsman's GIF file is a color image of the executing GUI-based program and displayed as a clickable image." **This is incorrect.**

As the cited text clearly explains, ""the GIFF file thus built is a 256 *__color image of the GUI screen__* of the first computer 19. The browser 27 on the second computer 25 will decode the HTML document file, and locate the references to the GIFF file, request and retrieve the GIFF file containing the screen image in a separate HTTP request, and display the GIFF image on the screen of the second computer 25, as an HTML "clickable" image." (*emphasis added*). Appellant respectfully submits that an image of a GUI of a text-based program is not equivalent to an image of the program itself, nor, more particularly, of an executable block diagram of a graphical program. Clearly, the GIFF image of a GUI corresponds to information regarding a GUI, and is not germane or remotely relevant to Appellant's claimed information regarding a block diagram of a

graphical program. Thus, Appellant respectfully submits that the Examiner's assertion that "one of ordinary skill in the art would readily comprehend that the GIF file represents the GUI features and the graphical program features of the executing GUI-based program" is incorrect, at least because the cited program is *not* a graphical program, *and* because the GIF file does not include "graphical program features".

The Examiner then continues to repeat these assertions and arguments that MS-Windows programs are graphical programs. Appellant has thoroughly explained above and previously why this is incorrect, and respectfully submits that the Examiner has provided no evidence that Huntsman (which nowhere even mentions the term "graphical program", nor "block diagram") discloses a graphical program as defined in the claim and Specification. For brevity, Appellant has not correspondingly repeated the above arguments and explanations, since the Examiner has not presented any new arguments regarding this issue, and respectfully directs the Examiner's attention to the arguments presented above, and in the Appeal Brief.

The Examiner argues that Huntsman does not teach away from Claim 59, and that Huntsman discloses "sending a GIF file representation of an executing GUI-based program". The Examiner incorrectly characterizes Huntsman's GUI of the program as "a representation of an executing GUI-based program", apparently attempting to blur the distinction between a programs GUI and a separate and distinct representation of the program, and further, to blur or ignore the distinction between Appellant's claimed graphical program *user interface* and graphical program *block diagram*. Huntsman is quite clear regarding the nature of the cited GIF file, specifically, that it is used to present or recapitulate the program's GUI remotely. Appellant respectfully submits that one of skill in the art would readily understand that Huntsman's GIF file (which is used to present the text-based program's *GUI* on the remote computer) corresponds to Appellant's claimed "information describing a user interface of the graphical program", and thus, does not, and cannot, teach or suggest the separately recited "information regarding the block diagram of the graphical program".

The Examiner then incorrectly argues that "Huntsman's invention relates to graphical programs (*e.g.,* MS-Windows programs", and that "The claimed invention only requires sending a user interface and graphical features of a graphical program", and thus

that "Huntsman does <u>not</u> teach away from Claim 59, as averred by the Appellant". This is incorrect. Claim 59 (as well as the Specification) nowhere defines the block diagram of the graphical program as the "graphical features of a graphical program". Rather, claim 59 recites that the block diagram includes "a plurality of interconnected function icons representing graphical data flow of a desired function, and <u>wherein said executing the graphical program comprises executing the block diagram</u>" (*emphasis added*) In other words, the block diagram both visually represents graphical data flow, but is also executed to perform the program functionality. Clearly, the block diagram is not just the "graphical features of a graphical program", but is also the executable portion of the graphical program. Appellant further notes that Huntsman nowhere mentions the term "graphical program" at all, and so Appellant submits that the Examiner's use of this term to describe Huntsman's MS-Windows (text-based) programs is not only incorrect, but improper, especially in light of Appellant's definition in both the claims and the Specification.

Regarding the Examiner's assertion that "it is permissible to combine the teaching of Kodosky into the teaching of Huntsman" because "Huntsman is within the field of the Appellant's endeavor and hence is analogous prior art because Huntsman's invention is directed to a remote control system for remotely controlling a Microsoft Windows® or other GUI-based first computer from a second computer over the Internet using only a standard world-wide-web hypertext browser on the second computer." and that "Kodosky is concerned with the same problem which the Appellant sought to be solved and hence is analogous prior art because Kodosky's invention is directed to a method for programming a computer system to control at least one of a virtual instrument and an instrument.", Appellant respectfully notes that since neither reference, nor the combination of references, discloses *sending information regarding the block diagram* of the graphical program over the network to the client computer system after establishing the network connection with the client computer system, *where the information regarding the block diagram is useable by the client computer system to display the block diagram on a client computer system*, particularly in addition to *sending information describing a user interface of the graphical program* over the network to the client computer system after establishing the network connection with the client computer system, *where the*

information regarding the user interface is useable by the client computer system to display the user interface on the client computer system, a prima facie case of obviousness has not been made.

Appellant respectfully requests that the terms "graphical program" and "block diagram", and "user interface", be interpreted as clearly recited and defined in the Specification and claims, and more particularly, that the Examiner refrain from improperly interpreting these terms in a manner contrary to the Specification and claims.

Contrary to the Examiner's assertions, the Examiner has not provided any evidence that Huntsman discloses a graphical program (as defined and claimed by Appellant), nor that either reference (nor a combination of the two) teaches sending information regarding a block diagram over a network, as claimed.

The Examiner (in h)) argues that "the Appellant has merely provided broad statements characterizing the prior art as failing to teach or suggest certain features of the claimed invention. Thus, the Appellant has failed to present any argument against the Examiner's interpretation of the claims and specifically point out the details in Huntsman and Kodosky that support the Appellant's assertion that Huntsman and Kodosky fail to teach or suggest certain features of the claimed invention." This is incorrect.

Appellant has provided detailed and thorough analysis and reasoning regarding the invention scope, the cited art, and the Examiner's interpretations and analyses, and has clearly explained precisely why and how the cited art fails to teach the particular functionality claimed. Again, Appellant respectfully directs the Examiner's attention to the arguments provided above, and in the Appeal Brief.

Regarding the Examiner's assertion that Appellant has "only attacked the references individually", as explained previously, Appellant notes that even in combination the cited references fail to disclose sending information regarding a block diagram of a graphical program over a network. Applicant respectfully reminds the Examiner that it is improper for the Examiner to simply add missing claim elements to the Examiner's alleged combination construction, which Appellant submits the Examiner has done, particularly regarding the feature of sending information regarding a block diagram of a graphical program over a network, as neither reference discloses this

functionality. Appellant submits that the Examiner has redefined key terms and added new features as needed in an attempt to reconstruct the particular features and limitations of claim 59, apparently using Appellant's claim as a blueprint, which is improper.

Thus, for at least the reasons presented above, the cited art, taken singly or in combination, fails to teach or suggest all the features and limitations of claim 59, and so claim 59, and those claims respectively dependent therefrom, are patentably distinct and non-obvious over the cited art, and are thus allowable.

The above arguments also apply to the other independent claims.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Examiner's rejection of claims 59-104 was erroneous, and reversal of the decision is respectfully requested.

The Commissioner is authorized to charge any fees which may be required or credit any overpayment to Meyertons, Hood, Kivlin, Kowert & Goetzel P.C., Deposit Account No. 50-1505/5150-38605/JCH.

Respectfully submitted,

/Jeffrey C. Hood/

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